IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4897 of 1993

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMARSINH C. CHHASATIA

Versus

SUPERINTENDENT OF POLICE

Appearance:

MS SONAL SHAH for MR YN OZA for Petitioner No. 1

MR KP RAWAL, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1.1 In this petition the petitioner has challenged the decision of the respondents to recover Rs.13,000/from the petitioner's salary as economic rent from 3.11.1988 to 31.3.1993 and also the decision to charge Rs.200 from the petitioner by way of economic rent per month.

2.1 The petitioner was appointed as Police Constable

and he was allotted a Quarter at Baroda. Thereafter he was transferred to Mehsana Railway Police Station. It seems that the petitioner has not vacated the quarter allotted to him and therefore two notices were served upon him on 7.1.1992 and 6.12.1992 to which the petitioner has replied. He had requested the respondent to allow him to retain the quarter with him. Ultimately the respondents issued notice dated 3.4.1993 demanding recovery of economic rent as stated hereinabove. Therefore, the present petition has been filed.

2.2 This matter was admitted on 17th May 1993 and interim stay was granted as regards economic rent.

2.3 A bare perusal of the petition discloses that a vague petition is filed before this Court giving no details about the circumstances in which the impugned order came to be passed. It is also not mentioned as to under what circumstances the petitioner retained the quarter. Ordinarily if a head of the family is transferred, it is expected that the family members would join unless some extraordinary reason is there. No such reason is disclosed by the petitioner. The only inference that can be drawn is that the petitioner is interested in occupying the quarter and therefore he has not vacated the same.

3.1 Ms Shah for the petitioner relied upon Rule 223 of Gujarat Police Manual which pertains to normal housing arrangements. She submitted that it is mandatory on the part of the respondent to provide rent free accommodation to all police officers of and below the rank of Inspector. The petitioner was a Constable. Constable was defined under Rule 70 which is a class-III post Therefore, it is clear that the Government is not required to give rent free accommodation to a Constable and only officers viz. Police Sub Inspector and the Inspectors are required to be given rent free accommodation. Therefore, Rule 223 is of no assistance to the petitioner.

3.2 Assuming that the petitioner is eligible for rent free accommodation, on transfer the government officer is required to vacate the rent free accommodation. Accordingly on his transfer the petitioner should have vacated the premises. Therefore, even that ground is not available to the petitioner.

4.1 The State Government issued a resolution dated 22.10.82 laying down criteria for occupying the quarter. In case of transfer, if an employee retains the

government quarter without prior permission, then he has to pay rent. It was noticed that in many cases employees continue to occupy the quarters unauthorisedly after their transfer, as a result of which the employees who were eligible to get the government quarter were deprived of the housing facility, causing lot of inconvenience and loss.

4.2 They were required to hire residential accommodation at extraordinary cost. From cities if the employees are transferred and are retaining the quarters, the innocent eligible and the persons appointed/transferred to cities would suffer a lot. The Court has to keep this in mind. The innocent hopeful allottees are not before the Court and their interest is also required to be protected. When the decision is taken which is made applicable to all, there should be no interference. In a petition under Articles 226 and 227 of the Constitution of India, above aspects are required to be taken into consideration. For unauthorised occupation, rent fixed by the competent authority must be recovered. State should not suffer at the hands of the people who were asked to see that others are acting according to law and they cannot be permitted to breach the policy which is in the interest of all the employees.

5.1 The Division Bench of this Court in LPA No.608 of 1997 decided on 12.6.2000 considered the question of retention of the quarter beyond the period of two months in case of transfer of a police personnel who was held to be unauthorised occupant and considering the resolution of 1982, Court held that the retention of a quarter beyond the period of two months was unauthorised and occupant was required to pay rent. Thus, the petitioner continued to occupy the quarter without any authority and must be treated as unauthorised occupant of the quarter and therefore liable to pay rent in accordance with law.

5.2 This Court by order dated 13.7.2004 passed in Special Civil Application No.7867/93 has taken similar view which is squarely applicable to the facts of the present case.

6.1 In any case, once a government servant is transferred, he has to vacate the quarter as per the policy of the government, failing which he is required to pay the amount fixed by the government.

6.1 Learned counsel for the petitioner submitted that the petitioner has already retired and no recovery may be effected from him after a lapse of many years. This

contention cannot be accepted inasmuch as merely because the petitioner has retired from service would not absolve him from paying the amount due to the respondent. It is required to be noted that this Court has already decided the issue on 30th June 2000. Even thereafter the petitioner could have paid the amount which he has not done. Therefore, now this court cannot direct for waiver of the amount in question.

6.3 Ms Shah for Mr. Yatin Oza states that in spite of the efforts, the petitioner could not be contacted and therefore she could not verify whether the payment in question has already been made. Therefore it is directed that the respondent shall be entitled to recover the amount of Rs.13000/- or the amount which may be due from him after deducting the amount already paid by the petitioner if the amount is not already paid. Moreover, the respondent shall also be entitled to recover interest at the rate of 9% from 3.4.1993 till the amount is repaid. However, it is observed that if the petitioner makes a representation to the authority requesting for suitable installments for repayment, the concerned authority shall consider the same.

7.1 In the result, there are no merits in the petition and the same is required to be rejected. Accordingly the petition is rejected. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

[K.S. JHAVERI, J.]
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